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3 HONORABLE JAMES L. ROBART
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JOSEPH J. HESKETH III, on his behalf
10 and on behalf of other similarly situated
persons,

11 Plaintiff,

12 v.

13 TOTAL RENAL CARE, INC., on its own
14 behalf and on behalf of other similarly
situated persons,

15 Defendant.

No. 2:20-cv-01733-JLR

DECLARATION OF SHAWN
ZUCKERMAN IN SUPPORT OF TOTAL
RENAL CARE, INC.'S ANSWER TO
SECOND AMENDED COMPLAINT

17 I, Shawn Zuckerman, declare as follows:

18 1. I am employed by Total Renal Care, Inc. ("TRC" or "Defendant") as Director,
19 Shared Services. I am of legal age and competent to make this declaration. The statements
20 contained herein are based on my personal knowledge and on documents maintained by DaVita,
21 including its subsidiaries like TRC, in the ordinary course of business.

22 2. DaVita's January 2020 employee handbook, titled "Teammate Policies," includes
23 an express disclaimer that the policies do not create a contract. Attached to this declaration as
24 **Exhibit 1** is a true and correct copy of the relevant pages from the January 2020 Teammate
25 Policies handbook, which is specifically referenced in the Second Amended Complaint.

26
DECLARATION OF SHAWN
ZUCKERMAN (No. 2:20-cv-01733)-1

152626859.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

3. The January 2020 Teammate Policies also includes a “Disaster Relief Policy.” Attached to this declaration as **Exhibit 2** is a true and correct copy of the pages from the Teammate Policies handbook comprising DaVita’s Disaster Relief Policy, which is specifically referenced in the Second Amended Complaint.

4. In March 2020, DaVita issued a statement regarding its Disaster Relief Policy and inserted a paragraph into the Disaster Relief Policy to specifically reference the COVID-19 pandemic. Attached to this declaration as **Exhibit 3** is a true and correct copy the March 27, 2020 email sent to all teammates, which included a link to that statement. Also attached to this declaration as **Exhibit 3** are true and correct copies of the statement itself and the complete Disaster Relief Policy with the inserted paragraph regarding COVID-19.

5. Employees annually acknowledge they have read, understand, and will adhere to DaVita's employment policies and any changes to those policies. Plaintiff Joseph Hesketh signed such an acknowledgement related to the January 2020 Teammate Policies. Attached to this declaration as **Exhibit 4** is a true and correct copy of Plaintiff's acknowledgement, attestation, and certificate of completion for the January 2020 Teammate Policies update.

6. The August 2020 Teammate Policies includes the same Disaster Relief Policy language shared with teammates on March 27, 2020. It also includes the same express disclaimer that the policies do not create a contract. Attached to this declaration as Exhibit 5 is a true and correct copy of the relevant pages from the August 2020 Teammate Policies handbook comprising of the disclaimers and of DaVita's Disaster Relief Policy.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed in PLANO, TX on May 26, 2021.

**DECLARATION OF SHAWN
ZUCKERMAN (No. 2:20-cv-01733) -2**

Perkins Coie LLP
1201 Third Avenue, Suite 4900
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Shawn Zuckerman

DECLARATION OF SHAWN
ZUCKERMAN (No. 2:20-cv-01733) -3

152626859.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify under penalty of perjury that on May 26, 2021, I electronically filed the
4 foregoing **DECLARATION OF SHAWN ZUCKERMAN** with the Clerk of the Court using
the CM/ECF system, which will send notification of such filing to the following:

5
6 Christina L Henry, WSBA 31273
7 Email: chenry@hdm-legal.com
HENRY & DEGRAAFF, PS
787 Maynard Ave S
8 Seattle, WA 98104
Telephone: 206-330-0595
9 Facsimile: 206-400-7609
10 *Attorney for Plaintiffs*

- ____ Via Hand Delivery
____ Via U.S. Mail, 1st Class, Postage
 Prepaid
____ Via Overnight Courier
____ Via Facsimile
X Via E-Filing

11
12 J. Craig Jones
Pro Hac Vice Forthcoming
Email: craig@joneshilllaw.com
13 JONES & HILL, LLC
14 131 Highway 165 South
Oakdale, LA 71463
Telephone: 318-335-1333
Facsimile: 318-335-1934
15 *Attorney for Plaintiffs*

- ____ Via Hand Delivery
____ Via U.S. Mail, 1st Class, Postage
 Prepaid
____ Via Overnight Courier
____ Via Facsimile
X Via E-Filing

17
18 Scott C. Borison
Pro Hac Vice Forthcoming
Email: scott@borisonfirm.com
19 BORISON FIRM, LLC
20 1900 S. Norfolk Rd. Suite 350
San Mateo CA 94403
Telephone: 301-620-1016
Facsimile: 301-620-1018
21 *Attorney for Plaintiffs*

- ____ Via Hand Delivery
____ Via U.S. Mail, 1st Class, Postage
 Prepaid
____ Via Overnight Courier
____ Via Facsimile
X Via E-Filing

23
24 DATED this 26th day of May 2021 in Seattle, Washington.

25
26 s/ Kyle Koats

 Kyle Koats, Legal Practice Assistant

CERTIFICATE OF SERVICE
(No. 2:20-cv-01733) -1

152626859.1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Exhibit 1

Teammate Policies

Effective January 1, 2020



Davita
Kidney Care

TRC 000001

Teammate Policies

Effective January 1, 2020

OUR MISSION

To be the Provider, Partner and Employer of Choice

OUR CORE VALUES

Service Excellence, Integrity, Team, Continuous Improvement,
Accountability, Fulfillment, Fun

This manual will be updated periodically. Please refer to the electronic copy, found on the [People Services Page](#), for the most updated policy revision. For any proposed policy changes or additions, please email TeammatePolicies@davita.com.

IMPORTANT

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EMPLOYMENT WITH DAVITA IS AT-WILL. JUST AS ALL TEAMMATES HAVE THE RIGHT TO END THEIR WORK RELATIONSHIP WITH DAVITA, WITH OR WITHOUT NOTICE, AND WITH OR WITHOUT CAUSE, SO TOO DOES DAVITA HAVE THE SAME RIGHT. THE LANGUAGE USED IN THESE POLICIES AND ANY VERBAL STATEMENTS MADE BY MANAGEMENT ARE NOT INTENDED TO CONSTITUTE A CONTRACT OF EMPLOYMENT, EITHER EXPRESSED OR IMPLIED, AND THEY ARE NOT A GUARANTEE OF EMPLOYMENT FOR A SPECIFIC DURATION OR ANY CHANGE TO DAVITA'S POLICY OF AT-WILL EMPLOYMENT. THE POLICY OF AT-WILL EMPLOYMENT CAN ONLY BE MODIFIED IN WRITING, SIGNED BY A SENIOR EXECUTIVE OFFICER OF THE COMPANY.

THE TEAMMATE POLICIES HAVE BEEN PROVIDED TO OFFER GUIDANCE IN HANDLING MANY ISSUES, BUT THE POLICIES ALSO ALLOW FOR LATITUDE IN THEIR APPLICATION TO INDIVIDUAL CIRCUMSTANCES OR AS THE NEEDS OF OUR BUSINESS MAY WARRANT. EXCEPT FOR THE POLICY OF AT-WILL EMPLOYMENT, ANY POLICY MAY BE CANCELED OR MODIFIED AT ANY TIME, AT DAVITA'S SOLE DISCRETION, WITH OR WITHOUT PRIOR NOTICE.

DAVITA COMPLIES WITH ALL APPLICABLE LAWS, INCLUDING ALL FEDERAL, STATE AND LOCAL EMPLOYMENT-RELATED LAWS AND REGULATIONS. THESE POLICIES ARE INTENDED TO FULLY COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, AND THEY WILL BE INTERPRETED AND APPLIED IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS. IF ANY OF THE POLICIES CONTAINED HEREIN INADVERTENTLY CONFLICT WITH APPLICABLE LAWS OR REGULATIONS, THOSE LAWS AND REGULATIONS WILL PREVAIL OVER THE AFFECTED TEAMMATE POLICY.

THESE TEAMMATE POLICIES APPLY TO ALL DAVITA TEAMMATES WITHIN THE UNITED STATES. THEY DO NOT APPLY TO TEAMMATES WHO ARE EMPLOYED OUTSIDE OF THE UNITED STATES, FOR WHOM DIFFERENT GUIDELINES AND POLICIES, DEPENDING ON THEIR LOCATION, MAY APPLY.

AS A CONDITION OF EMPLOYMENT, ALL TEAMMATES MUST ATTEST TO READING AND BEING BOUND BY THE TEAMMATE POLICIES ANNUALLY. FAILURE TO COMPLY WITH DAVITA'S POLICIES MAY RESULT IN DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION.

Exhibit 2



compensable as he or she is generally free to pursue personal activities.

REQUIREMENTS OF ASSIGNMENT

- Teammates will be physically and mentally fit for duty in accordance with their respective professional licenses.
- Teammates designated as subject-to-call have the ability to trade assignments, with the approval of their supervisor.
- Teammates shall refrain from drinking alcohol or the use of drugs that are illegal under federal law.
- Teammates shall be reachable, but they have no geographic restriction on location during the subject-to-call period.
- Teammates need to be able to respond to the incoming call within 15 minutes of receiving the call; however, this is not the time frame in which the teammate needs to report to their assignment.
- Teammates must provide contact information where they are reachable, but this can be a cell phone or another mobile device.

COMPENSATION

- Although not legally obligated to do so, DaVita may choose to provide these subject-to-call teammates with a lump-sum payment for taking on this responsibility. When a lump-sum payment is provided, it will be a flat-rate payment—not an hourly rate—and may differ depending on the day of the week and market/location.
- Any work and/or phone call in which the teammate participates while in a subject-to-call status is compensable in accordance with state law, and the teammate shall

record such time via time stamps in the timekeeping system.

4.11 Pay Transparency

DaVita will not discharge or in any other manner discriminate against teammates or applicants because they have inquired about, discussed or disclosed their own pay or the pay of another teammate or applicant. However, teammates who have access to the compensation information of other teammates or applicants as a part of their essential job functions cannot disclose the pay of other teammates or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (1) in response to a formal complaint or charge, (2) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by DaVita, or (3) consistent with DaVita's legal duty to furnish information.

4.12 Disaster Relief Policy

The Disaster Relief Policy provides for pay continuance during an emergency time frame when a declared emergency or natural disaster prevents teammates from performing their regular duties. A declared emergency or natural disaster shall be proclaimed by either the President of the United States, a state Governor or other elected official, or if local leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural disaster, this policy provides information relative to pay practices, work schedules, and facility or business office coverage. This policy supersedes and replaces any past practice or policy relating to pay practices, work schedules, and facility coverage.



in the event of a declared emergency or natural disaster.

The language used in this policy is not intended to constitute a contract of employment, either express or implied, to give teammates any additional rights to continued employment, pay or benefits, or to otherwise change DaVita's policy of at-will employment.

EMERGENCY TIME FRAME

The emergency time frame (and affected facility or business office) will be identified on a case-by-case basis by local leadership (DVP, GVP and PSD) and the Disaster Governance Council, dependent on the severity of the disaster and location.

PAY PRACTICE FOR NON-EXEMPT TEAMMATES

If a facility or business office is closed due to a declared emergency or natural disaster as defined above, non-exempt teammates will be paid for their regularly scheduled hours at their base rate of pay during the designated emergency time frame.

If a facility or business office opens late or closes early due to a declared emergency or natural disaster as defined above, teammates will be notified promptly of the approved opening or closing time. Non-exempt teammates who arrive or leave at that approved opening or closing time will be paid their hourly rate of pay for their regularly scheduled hours, unless state law provides otherwise. Any non-exempt teammate who arrives at work after the approved opening time or leaves work before the approved closing time will be paid only for the time actually worked, in which case, the teammate

should utilize PTO in accordance with the regular PTO Policy.

If a designated facility or business office is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's base rate of pay.

Non-exempt traveling teammates, as part of the Disaster Volunteer Group, who provide shift coverage at sites assigned by local Leadership will be paid a 50 percent premium for all compensable straight time hours, including travel time.

If a designated facility or business office is open during the emergency time frame and teammates are unable to work, teammates should utilize PTO in accordance with the PTO policy.

Non-exempt teammates who are unable to report to their facility or business office should not perform any work remotely unless approved by a supervisor. If any work is done remotely, teammates must report time worked via time stamps in the timekeeping system and will be paid accordingly.

Exhibit 3

From: Village Communications <Communications@davita.com>
Sent: Friday, March 27, 2020 7:16 PM
To: Village Communications <Communications@davita.com>
Subject: Daily All Teammate COVID-19 Update



To: All U.S. DKC Teammates
From: Dr. Jeff Giulian, Chief Medical Officer
Mike Staffieri, Chief Operating Officer

March 27: Update on COVID-19

Thank you for the work you are doing to help keep each other, and our patients, safe and healthy. Please reach out with any additional support you may need. You can continue to find information on COVID-19 on the [VillageWeb page](#) and send questions to covid19questions@davita.com.

This graphic block features a red background. On the left, there is a white box containing a quote from "Administrative Assistant Susan Lara": "'From what I know, firefighters run to fires when they happen. I think that means as a health care worker I need to run to sick people. This is what I do.'". Below the quote is a link "Click for full story and resources.". To the right is a photograph of a woman with glasses and a blue face mask, wearing a dark blue polo shirt with a name tag. At the bottom left is the "VILLAGE STRONG" logo with the tagline "Resources for me, my family and my team." Below the logo is a stylized graphic of overlapping colored bands.

Here's what you need to know as of March 27:

All Teammates

- We understand that some teammates have raised questions about the application of DaVita's Disaster Relief Policy (section 4.12 in DaVita's Teammate Policies Handbook) to the current COVID-19 pandemic. To learn more about this issue, click [here](#).

Field Teammates

- **New PPE Job Aid:** Please see our [How to Put on and Remove PPE Job Aid](#) for facilities treating patients positive for COVID-19 or symptomatic PUIs.
- Please see this [Job Aid](#), which explains best practices for how teammates can store their surgical masks while eating during breaks.
- Check out [this video](#) of Dr. Giullian, our Chief Medical Officer, discussing PPE.
- Check out [this video](#) of Mandy Hale, our VP of Nursing, discussing why we are essential teammates
- Dietitians and Social Workers: We have new job aids on treating PUIs and patients positive for COVID-19 in cohorts.
 - [Dietitian Job Aid](#)
 - [Social Worker Job Aid](#)

Home Teammates

- We shared ASDIN's statement on access procedures being considered essential with our physicians, available [here](#). Also, check out CMS's recent [guidance](#) on the topic.

IKC Teammates

- We have updated our [FAQs](#).

Business Office Teammates

- We have new guidance on printing from home, found [here](#).

Village Support

- [Resources to Help Me, My Family, My Team](#)
- [Send an encouraging eCard](#) through Gateway
- **Want to help?** Consider donating to DaVita Village Network [here](#) or donating [PTO](#) here to support impacted teammates and their families
- Share your #DaVitaWay photos and stories at covid19questions@davita.com

For more information, visit the [COVID-19 VillageWeb page](#).

Questions? Email COVID19questions@davita.com.

One for All!

Service Excellence | Integrity | Team | Continuous Improvement | Accountability | Fulfillment | Fun

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CONFIDENTIALITY NOTICE: THIS MESSAGE IS CONFIDENTIAL, INTENDED FOR THE NAMED RECIPIENT(S) AND MAY CONTAIN INFORMATION THAT IS (I) PROPRIETARY TO THE SENDER, AND/OR, (II) PRIVILEGED, CONFIDENTIAL, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE STATE AND FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, PRIVACY STANDARDS IMPOSED PURSUANT TO THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA"). IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE (I) NOTIFY US IMMEDIATELY BY REPLY E-MAIL OR BY TELEPHONE AT (855.472.9822), (II) REMOVE IT FROM YOUR SYSTEM, AND (III) DESTROY THE ORIGINAL TRANSMISSION AND ITS ATTACHMENTS WITHOUT READING OR SAVING THEM. THANK YOU.

-DaVita Inc-

Teammate Policies Section 4.12 (Disaster Relief Policy)

We understand that some teammates have raised questions about the application of DaVita's Disaster Relief Policy (section 4.12 in DaVita's Teammate Policies Handbook) to the current COVID-19 pandemic. The Disaster Relief Policy was created to support DaVita's teammates in situations where declared emergencies or natural disasters prevent our facilities from operating or prevent teammates from working, with a goal of ensuring that DaVita can continue to operate despite the destruction of the disaster. As explained in the first sentence of the policy, it applies "during an emergency time frame when a declared emergency or natural disaster prevents teammates from performing their regular duties."

DaVita provides life-sustaining care to our patients, and it is critical that we continue to do so even during difficult situations like the COVID-19 pandemic. Although we're operating in a changing environment, at this point the COVID-19 pandemic has not created a situation where teammates are prevented from performing their regular duties. Our facilities remain open, and our teammates are continuing to work and treat patients. Indeed, our facilities and even our central business offices are exempted from any of the state provisions because we are an essential healthcare service. In these circumstances, the special pay rules described in the policy do not apply. In addition, the policy doesn't apply because there has been no emergency time-frame or specific emergency-affected facilities identified by local leadership (DVP, GVP and PSD), as required by the terms of the existing Policy. Under the existing Policy, it's not just the declaration of an emergency by the President or a State that triggers application of the Policy; local leadership and the Disaster Governance Council also must decide that the policy applies during a certain time frame and to certain facilities or offices. That has not happened here.

However, to address questions about the application of the Disaster Relief Policy to the COVID-19 crisis, and consistent with the statement in the Teammate Policies that "any policy may be canceled or modified at any time, at DaVita's sole discretion, with or without prior notice," we are adding the following language explaining how the Policy operates in these particular circumstances:

COVID-19 CRISIS

The Disaster Relief Policy does not apply to the COVID-19 crisis. The Disaster Relief Policy applies only when teammates are unable to perform their regular duties. The policy is effective upon a decision by local leadership and the Disaster Governance Council that a declared emergency or natural disaster prevents our facilities from operating or prevents our teammates from working. Under the COVID-19 crisis, our teammates are able to work and are essential in either in a supporting role for our health care workers or in actually providing healthcare services to patients.

We recognize that the pandemic has made our teammates' work more difficult and complex, and we are providing extra support to them in a number of ways. The safety and well-being of our teammates and patients is our top priority, and we will continue to evaluate the steps we are taking to care for our teammates and patients throughout this pandemic.

Teammate Policy Update

4.12 Disaster Relief Policy

The Disaster Relief Policy provides for pay continuance during an emergency time frame when a declared emergency or natural disaster prevents teammates from performing their regular duties. A declared emergency or natural disaster shall be proclaimed by either the President of the United States, a state Governor or other elected official, or if local leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural disaster, this policy provides information relative to pay practices, work schedules, and facility or business office coverage. This policy supersedes and replaces any past practice or policy relating to pay practices, work schedules, and facility coverage in the event of a declared emergency or natural disaster.

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Emergency Time Frame

The emergency time frame (and affected facility or business office) will be identified on a case-by-case basis by local leadership (DVP, GVP and PSD) and the Disaster Governance Council, dependent on the severity of the disaster and location.

Pay Practice for Non-Exempt Teammates

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Teammate Policy Update

requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's base rate of pay.

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Non-exempt teammates who are unable to report to their facility or business office should not perform any work remotely unless approved by a supervisor. If any work is done remotely, teammates must report time worked via time stamps in the timekeeping system and will be paid accordingly.

Exhibit 4



This is to certify that:

JJ Hesketh

has successfully completed

PS1009F: 2020 Teammate Policies Update on 1/8/2020

Teammate Acknowledgement

As a DaVita teammate, I understand I am expected to read, understand and adhere to our Company's policies. I will familiarize myself with the material in the [Teammate Policies](#), the [Code of Conduct](#) and the DaVita Compliance Program, as well as any changes to them. I understand that these policies and programs can be found on DaVita's [VillageWeb](#) and [People Services Page](#). There will be a work station available to me upon reasonable request with access to the [VillageWeb](#) where these policies and programs may be found. I understand that I am governed by the contents of the [Teammate Policies](#), the [Code of Conduct](#) and the DaVita Compliance Program, and I recognize that DaVita reserves the right to interpret, amend, modify, supersede or eliminate policies, practices or benefits (except employment-at-will policies) described in these policies from time-to-time in its sole and absolute discretion. No oral amendment to any policy or benefit described herein shall be effective.

I understand that the [Teammate Policies](#), the [Code of Conduct](#) and the DaVita Compliance Program and their contents are not intended to create any contractual or legal obligations, express or implied, between DaVita and its teammates; however, these policies do set forth the entire employment arrangement between me and DaVita with respect to the at-will nature of my employment relationship with DaVita. Unless otherwise specified in a written contract of employment signed by me and a duly authorized official of DaVita, I recognize that my employment has no specific term and is at the mutual consent of myself and DaVita. Accordingly, either DaVita or I can terminate my employment relationship at any time, with or without cause, with or without notice.

I Acknowledge

Back

26/28

Teammate Attestation

I attest that

I have read or will read the [2020 Teammate Policies Handbook](#).

I Attest

Back

Exhibit 5

Teammate Policies

Effective August 19, 2020



Davita
Kidney Care

TRC 000155

Teammate Policies

Effective August 19, 2020

OUR MISSION

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AS A CONDITION OF EMPLOYMENT, ALL TEAMMATES MUST ATTEST TO READING AND BEING BOUND BY THE TEAMMATE POLICIES ANNUALLY. FAILURE TO COMPLY WITH DAVITA'S POLICIES MAY RESULT IN DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION.

DaVita will not discriminate against any nursing mother taking reasonable breaks to express milk for her child and will comply with all applicable federal, state and local laws regarding nursing mothers.

4.10 Subject-to-Call

DaVita clinical non-exempt teammates may be scheduled as “subject-to-call.” In this status, a teammate is available by phone to provide assistance or report to work if the need arises; however, the teammate’s time is not compensable as he or she is generally free to pursue personal activities.

REQUIREMENTS OF ASSIGNMENT

- Teammates will be physically and mentally fit for duty in accordance with their respective professional licenses.
- Teammates designated as subject-to-call have the ability to trade assignments, with the approval of their supervisor.
- Teammates shall refrain from drinking alcohol or the use of drugs that are illegal under federal law.
- Teammates shall be reachable, but they have no geographic restriction on location during the subject-to-call period.
- Teammates need to be able to respond to the incoming call within 15 minutes of receiving the call; however, this is not the time frame in which the teammate needs to report to their assignment.
- Teammates must provide contact information where they are reachable, but this can be a cell phone or another mobile device.

COMPENSATION

- Although not legally obligated to do so, DaVita may choose to provide these subject-to-call teammates with a lump-sum payment for taking on this responsibility. When a lump-sum payment is provided, it will be a flat-rate payment—not an hourly rate—and may differ depending on the day of the week and market/location.
- Any work and/or phone call in which the teammate participates while in a subject-to-call status is compensable in accordance with state law, and the teammate shall record such time via time stamps in the timekeeping system.

4.11 Pay Transparency

DaVita will not discharge or in any other manner discriminate against teammates or applicants because they have inquired about, discussed or disclosed their own pay or the pay of another teammate or applicant. However, teammates who have access to the compensation information of other teammates or applicants as a part of their essential job functions cannot disclose the pay of other teammates or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (1) in response to a formal complaint or charge, (2) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by DaVita, or (3) consistent with DaVita’s legal duty to furnish information.

4.12 Disaster Relief Policy

The Disaster Relief Policy provides for pay continuance during an emergency time frame when a declared emergency or natural



SECTION 4: Pay Practices

disaster prevents teammates from performing their regular duties. A declared emergency or natural disaster shall be proclaimed by either the President of the United States, a state Governor or other elected official, or if local leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural disaster, this policy provides information relative to pay practices, work schedules, and facility or business office coverage. This policy supersedes and replaces any past practice or policy relating to pay practices, work schedules, and facility coverage in the event of a declared emergency or natural disaster.

The language used in this policy is not intended to constitute a contract of employment, either express or implied, to give teammates any additional rights to continued employment, pay or benefits, or to otherwise change DaVita's policy of at-will employment.

COVID-19 CRISIS

The Disaster Relief Policy does not apply to the COVID-19 crisis. The Disaster Relief Policy applies only when teammates are unable to perform their regular duties. The policy is effective upon a decision by local leadership and the Disaster Governance Council that a declared emergency or natural disaster prevents our facilities from operating or prevents our teammates from working. Under the COVID-19 crisis, our teammates are able to work and are essential in either in a supporting role for our health care workers or in actually providing healthcare services to patients.

EMERGENCY TIME FRAME

The emergency time frame (and affected facility or business office) will be identified on a case-by-case basis by local leadership (DVP, GVP and PSD) and the Disaster Governance Council, dependent on the severity of the disaster and location.

PAY PRACTICE FOR NON-EXEMPT TEAMMATES

If a facility or business office is closed due to a declared emergency or natural disaster as defined above, non-exempt teammates will be paid for their regularly scheduled hours at their base rate of pay during the designated emergency time frame.

If a facility or business office opens late or closes early due to a declared emergency or natural disaster as defined above, teammates will be notified promptly of the approved opening or closing time. Non-exempt teammates who arrive or leave at that approved opening or closing time will be paid their hourly rate of pay for their regularly scheduled hours, unless state law provides otherwise. Any non-exempt teammate who arrives at work after the approved opening time or leaves work before the approved closing time will be paid only for the time actually worked, in which case, the teammate should utilize PTO in accordance with the regular PTO Policy.

If a designated facility or business office is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's base rate of pay.

Non-exempt traveling teammates, as part of the Disaster Volunteer Group, who provide shift coverage at sites assigned by local Leadership will be paid a 50 percent premium for all compensable straight time hours, including travel time.

If a designated facility or business office is open during the emergency time frame and teammates are unable to work, teammates should utilize PTO in accordance with the PTO policy.

Non-exempt teammates who are unable to report to their facility or business office

should not perform any work remotely unless approved by a supervisor. If any work is done remotely, teammates must report time worked via time stamps in the timekeeping system and will be paid accordingly.

